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U.S. COURTS

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RECD. FILED  
CLERK OF DISTRICT COURT  
IDAHO

FEE PAID  
RCPT #29466

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In re

STAGGS DEVELOPMENT, LLC

Debtor.

Case No.01-42353

MOTION FOR STAY RELIEF

COMES NOW Roy E. Hanson Jr. Mfg., Inc., (hereafter "Hanson Tank"), and pursuant to 11 U.S.C. § 362, Bankruptcy Rules 4001, 9013 and 9014, and District of Idaho Local Bankruptcy Rule 4001.2, moves the Court for its order granting relief from the automatic stay of 11 U.S.C. § 362(a) as to the property described in this motion by annulling, modifying, or otherwise terminating the automatic stay so as to permit Hanson to enforce its rights under its contracts and agreements with debtor, Staggs Development, LLC (hereafter "Staggs Development")

Hanson respectfully represents the following to the Court in support of this motion:

1. Debtor Staggs Development, LLC is an Idaho limited liability company. It and its related parties, 1<sup>st</sup> Propane of Rigby Inc., and Dennis Staggs and Shawna Staggs, husband and

wife, operated a propane business.

2. Roy E. Hanson, Jr. Mfg., Inc. is a California corporation which manufactures propane tanks.
3. On or about February 9, 2000 Staggs Development executed and delivered to Hanson Tank its Deed of Trust Note by the terms of which debtor agreed to pay \$75,035.13 plus interest at the rate of 9.75% per year with payments of \$794.89 due the first day of each month beginning on April 1, 2000, with final payment of all remaining principal and interest due on March 1, 2010. A copy of the Deed of Trust Note is attached hereto as Exhibit A and incorporated herein by this reference.
4. As of February 9, 2000 Staggs Development was the owner of real property located in Jefferson County, Idaho and more particularly described as follows:

Beginning at a point 18 feet South of the Northwest corner of Lot 3, Block 13 of the original townsite of Lewisville, Jefferson County, Idaho, as per the recorded plat or plan thereof on file in the office of the county recorder; running thence South 312 feet; thence East 150 feet; thence North 148.50 feet; thence East 48 feet; thence North 163.50 feet; thence West 198 feet to the point of beginning.
5. In order to secure payment of the Deed of Trust Note described herein, Staggs Development executed and delivered to Hanson Tank its Deed of Trust-Short Form encumbering the above described real property, which deed of trust was properly recorded as Instrument No. 301436, Official Records of Jefferson county, Idaho on February 16, 2000, a copy of the Deed of Trust-Short Form is attached hereto as Exhibit B and incorporated herein by this reference (including therewith a copy of the therein referenced Deed of Trust Master Form recorded June 23, 1998 as Instrument No. 248761, Official Records of Jefferson County, Idaho).
6. Debtor made only eight monthly payments called for in the promissory note, the last of payment was for November 2000. As of receipt of the November 2000 payment there

remains a principal balance on the note of \$73,510.53. Interest accrues at the rate of 9.75% per year. As of December 1, 2001 interest had accrued in the amount of \$7,764.55. Interest continues to accrue at the rate of \$19.64 per day.

7. Pursuant to paragraph 5.5 of the promissory note Hanson Tank is entitled to recover its costs and expenses in enforcing the promissory note, including reasonably attorney's fees.
8. Debtor's failure to pay installments as due is an event of default under the promissory note and deed of trust. Debtor's failure to pay real property taxes levied against the real property described herein for the years 2001, 2001 and 2002, is an event of default under the promissory note and deed of trust. To the extent it has not already done so, Hanson Tank hereby declares all the indebtedness evidenced by the promissory note and secured by the deed of trust to be immediately due and payable.
9. By reason of these defaults Hanson Tank is entitled to foreclosure and sale of debtor's interests pursuant to the deed of trust.
10. Hanson Tank alleges and believes that the present fair market value of the collateral described herein, based upon the observation of third parties is as follows:
  - a. Real Property \$59,383
11. Hanson Tank alleges that the present fair market value of its collateral may not exceed the sums due claimant and other liens or exemptions against the collateral.
12. Hanson Tank alleges that the estate of debtors and the trustee L.D. Fitzgerald, have no interest in the collateral which can be liquidated for the benefit of general creditors over and above the lien of Hanson Tank, other recorded lien claimants, and all exemptions allowable to debtor under applicable statutes.
13. Hanson Tank alleges that the collateral is not necessary to an effective reorganization of

debtor.

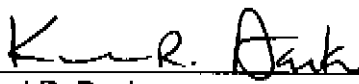
14. Hanson Tank does not have, and has not been offered adequate protection for its lien against the collateral; that the collateral value continues to decline for the continuing accrual of interest upon the obligation, together with the loss of use of the funds loaned debtor; that the collateral may not be properly insured; that if Hanson Tank is not permitted to foreclose its lien against the collateral it will suffer irreparable injury, loss and damage.

WHEREFORE, Roy F. Hanson, Jr. Mfg, Inc., moves the court to issue an order against the debtor, Staggs Development, LLC, and parties in interest:

- a. Pursuant to 11 U.S.C. § 362(d)(1) for cause, annulling, terminating, modifying, removing or conditioning the stay as against Hanson Tank and authorizing Hanson Tank to pursue all of its non-bankruptcy rights and remedies against the collateral in accordance with the note, deed of trust, and applicable state law.
- b. In the alternative, pursuant to 11 U.S.C. § 362(d)(2) annulling, terminating, modifying, removing or conditioning the stay as against Hanson Tank and authorizing Hanson tank to pursue all of its non-bankruptcy rights and remedies against the collateral in accordance with the note, deed of trust, and applicable state law.
- c. For such other and further relief as may be proper.

DATED this 15<sup>th</sup> day of July, 2002.

Holden, Kidwell, Hahn & Crapo, P.L.L.C.

  
Karl R. Decker

### NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a hearing on the foregoing motion will be held August 14, 2002 at 9:30 a.m. at the U.S. Bankruptcy Courtroom, United States Courthouse, 810 East Sherman, Pocatello, Idaho 83201.


### § 362(e) NOTICE

NOTICE IS HEREBY GIVEN that pursuant to 11 U.S.C. § 362(e) the stay provided for in § 11 U.S.C. § 362(a) will terminate thirty (30) days after the request unless the Court, after notice and a hearing, and within said thirty day period, orders the stay continued in effect pending a final hearing and determination under 11 U.S.C. § 362(d). Notice is further given that in the event an order continuing the stay is not entered within thirty days, that the Court may enter an order without further notice terminating the stay as requested in this motion. 11 U.S.C. § 362(e) should be consulted for additional requirements.

YOU ARE FURTHER NOTIFIED that as provided in District of Idaho, Local Bankruptcy Rule 4001.2, any objection to this motion must be in writing and must be filed and served at least five (5) days prior to the preliminary hearing. The objection shall also reasonably identify those matters contained in this motion which are to be at issue and any other basis for opposition of the motion. Absent the filing of a timely response, the Court may grant the relief sought in this motion without a hearing. Local Rule 4001.2 should be referred to for additional requirements.

DATED this 15<sup>th</sup> day of July, 2002.

Holden, Kidwell, Hahn & Crapo, P.L.L.C.

  
Karl R. Decker

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of July, 2002, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered as defined by Rule 5(b), F.R.Civ.P.

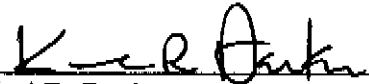
☐ hand **L.D. Fitzgerald**  
☒ mail: P.O. Box 6199  
Pocatello, Idaho 83205-6199  
☐ email:  
☐ fax:

☐ hand **Staggs Development, LLC**  
☒ mail: 252 N. 3800 E.  
Rigby, Idaho 83442  
☐ email:  
☐ fax:

☒ hand **Stephen A. Meikle**  
☐ mail: P.O. Box 51137  
Idaho Falls, Idaho 83405  
☐ email:  
☐ fax:

☐ hand **US Trustee**  
☒ mail: P.O. Box 110  
Boise, Idaho 83701  
☐ email:  
☐ fax:

☒ hand **Craig W. Simpson**  
☐ mail: P.O. Box 50484  
Idaho Falls, Idaho 83405  
☐ email:  
☐ fax:

  
Karl R. Decker

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## Deed of Trust Note

### 1. Initial Information

Date of note: February 9, 2000

Maturity date: March 1, 2010

Principal Sum: \$75,035.18

Made at: Idaho Falls, Idaho

Borrower: Staggs Development LLC, an Idaho limited liability company (LLC).

Lender: Roy E. Hanson Jr. Mfg., Inc., a California corporation (Hanson).

### 2. Borrower's Promise To Pay

LLC promises to pay to order of Hanson the principal sum plus interest. All payments shall be in money of the United States of America. LLC understands Hanson may transfer this note.

### 3. Interest

Interest will accrue on unpaid principal starting on March 1, 2000. LLC will pay interest at a yearly rate of 9.75%. The 9.75% interest rate applies both before and after default.

### 4. Payments

#### 4.1. Time And Place Of Payments

LLC will make level monthly payments of principal and interest for 10 years. The payments must be made in accordance with the attached amortization schedule. The monthly payments will be made on the 1st day of each month beginning on April 1, 2000. The monthly payments will continue until the Maturity Date, at which time all unpaid amounts shall be due and payable.

LLC's payments will be applied to interest before principal. If payments are made in accordance with the attached amortization schedule, LLC's final payment on the Maturity Date will be in the amount of \$38,425.42. LLC will make the monthly payments to 1524 Compton Ave., Los Angeles, CA or at a different place if required by Hanson.

#### 4.2. Amount Of Each Scheduled Payment

Each monthly payment will be in the amount of \$794.89. However, the amount of the payment due on the Maturity Date will be an amount sufficient to pay all unpaid interest and principal.

#### 4.3. Borrower's Prepayment Privilege

LLC has the right to make prepayments at any time in any amount without any penalty. Hanson will use all prepayments first to reduce accrued interest and then to reduce the amount of any unpaid principal. If LLC makes prepayments, there will be no change in the due date or amount of any subsequent monthly payment until the note has been fully repaid.

### 5. Borrower's Failure To Repay As Required

#### 5.1. Late Charges For Overdue Payments

If Hanson has not received the full amount of monthly payment within 10 days after due, LLC will pay a late charge to Hanson. The amount of the charge will be 5% of the overdue payment. LLC will pay this late charge promptly but only once on each late payment.

#### 5.2. Default

LLC will be in default if:

(a) LLC does not pay amount of any monthly payment on the date it is due;

(b) There is default by LLC in any of the conditions of the deed of trust given to secure this note;

(c) LLC makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, under the federal bankruptcy code or under any applicable state insolvency law; or

(d) Any bankruptcy, insolvency or other similar proceeding is started against LLC and has not been dismissed within sixty days after it is started, or LLC consents to or approves of any such proceeding or the appointment of any receiver for LLC or any substantial part of his property, or the appointment of any such receiver is not discharged within sixty days.

#### 5.3. Notice Of Default And Right To Accelerate

If LLC is in default, Hanson may send LLC a written notice telling LLC that if he does not pay the overdue amount by a certain date, Hanson may require LLC to pay immediately the full amount of unpaid principal and all the accrued interest. That date must be at least thirty days after the date on which the notice is delivered or mailed to LLC.

#### 5.4. Preservation Of Hanson's Rights

If LLC is in default and if Hanson does not require LLC to pay immediately the full amount of unpaid principal and interest, Hanson will still have the right to do so if the default continues or if a new default occurs.

#### 5.5. Payment Of Hanson's Costs And Expenses

If Hanson has accelerated the note, Hanson will have the right to be paid by LLC for all their costs and expenses in enforcing this note to the extent not prohibited by law. Those expenses include, but are not limited to, reasonable attorney's fees.

### 6. Giving The Notices

Notices to LLC shall be given by delivering it or by mailing it by first class mail to LLC at the address of LLC as stated in this note, or to a different address if LLC gives Hanson notice of a different address.

Notices to Hanson shall be given by mailing it by first class mail to Hanson at the address for Hanson as stated in this note or at a different address if LLC is given a notice of that different address by Hanson.

### 7. Waivers

LLC and any other person having obligations under this note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require Hanson to demand payment of amounts due. "Notice of dishonor" means the right to require Hanson to give notice to other persons that amounts due are unpaid.


### 8. Personal Guarantee

Dennis and Shawna Staggs, personally, and jointly and severally guarantee the obligations undertaken by Staggs Development LLC in this Deed of Trust Note.

Staggs Development LLC

By:   
Hrs. Dennis Staggs, President

  
Dennis Staggs

  
Shawna Staggs

EXHIBIT

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# DEED OF TRUST - SHORT FORM

## 1. Parties

The debtor/grantor is Staggs Development LLC, an Idaho limited liability company

The debtor's/grantor's address is 252 N. 3800 E., Rigby, Idaho.

The trustee is Gregory C. Calder.

The trustee's address is 2105 Coronado Street, Idaho Falls, Idaho.

The secured party/beneficiary is Roy E. Hanson, Jr., Mfg., Inc., a California corporation.

The secured party's/beneficiary's address is 1924 Compton Ave., Los Angeles, California.

## 2. Date

The effective date of this deed of trust is February 9, 2000.

## 3. Property

The property, the subject of this deed of trust, consists of real property. It is collectively called the property. Real property is called the real property and personal property is called the personal property. The property is located in Jefferson County, Idaho, and the legal description is:

Beginning at a point 18 feet South of the Northwest corner of Lot 3, Block 13 of the original townsite now the City of Lewisville, Jefferson County, Idaho, as per the recorded plat or plan thereof on file in the office of the county recorder; running thence South 312 feet; thence East 150 feet; thence North 148.50 feet; thence East 48 feet; thence North 163.50 feet; thence West 198 feet to the point of beginning.

## 4. Conveyance

Grantor grants and conveys the real property to trustee, in trust, with power of sale and grants a security interest in the personal property, if any. The conveyance is made to secure to

beneficiary the repayment of indebtedness evidenced by grantor's note dated February 9, 2000. The principal amount of the note is \$75,035.18. The latest maturity date, determined on the date this document is signed is March 1, 2010. The interest rate, payment terms, including maturity date, or balance due may be indexed, adjusted, renewed or renegotiated.

## 5. Terms

A master deed of trust recorded in the following counties of Idaho as the instrument number and on the date indicated contains the terms of this deed of trust:

Bonneville	#751269	June 23, 1988
Bingham	#372549	June 24, 1988
Bannock	#815502	July 15, 1988
Butte	#21202	June 24, 1988
Clark	#41833	June 23, 1988
Jefferson	#248761	June 23, 1988
Madison	#225949	June 23, 1988
Teton	#102695	June 23, 1988
Fremont	#406241	June 23, 1988
Power	#148079	June 23, 1988

The terms of the master deed of trust are incorporated into this document as authorized by Idaho Code § 45-1004. Borrower has been given a copy of the master deed of trust, this short form and the note. Modifications in the terms of the master form deed of trust are not attached to this document. If there are modifications, the attachment is made part of this document by this reference.

INSTRUMENT NO.	1016641
DATE	2-10-00
INST. CODE	265
IMAGED PGS	2
FEE	6.00
STATE OF IDAHO COUNTY OF BONNEVILLE	
I hereby certify that the within instrument was recorded.	
Ronald Longmore, County Recorder	
By	<i>R. Avery</i> Deputy
Request of	<i>Beard, St. Clair</i>

1016641 FEB1000 PM 4:19

BONNEVILLE COUNTY RECORDER

EXHIBIT

B



In the event terms in this document conflict with the terms in the master deed of trust, the terms of this document are the controlling terms.

Dated: February 9, 2000

Staggs Development LLC

By: Dennis Staggs  
Dennis Staggs, President

STATE OF IDAHO

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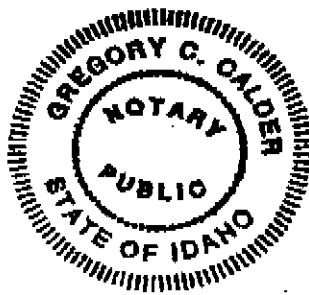
County of Bonneville

On February 9, 2000, before me, Gregory C. Calder, an Idaho notary public, personally appeared Dennis Staggs, known or identified to me to be the President of the limited liability company that executed the within instrument, and acknowledged to me that he executed the same.

In witness, I have set my hand and affixed my official seal the day and year in this certificate first above written.

Gregory C. Calder  
Notary Public for Idaho  
Residing at: Idaho Falls  
Commission expires: 4/19/02

(SEAL)



301436

Microfilm No.

FEB 16 2000

At 9:50 o'clock A M

CONNIE M KELLER

Jefferson Co. Recorder

Fee \$ 6.00 Deputy

Recorded at Request of  
Brenda St. Clair Gaffney

# DEED OF TRUST MASTER FORM

RECORDED BY  
HANSEN, BEARD MARTIN & ST. CLAIR, CHARTERED

Debtor, secured party and trustee agree:

## 1. DEFINITIONS.

The definition of words used often in this deed of trust include:

- 1.01 **Assessments.** Charges of governmental agencies, local improvement districts, irrigation districts, canal companies, condominium or planned unit development owners' associations and planning boards and any other person that might have a lien on the property are called "assessments".
- 1.02 **Beneficiary.** The trustee holds title for the benefit of secured party. The secured party is legally known as the "beneficiary" under this deed of trust but is called secured party.
- 1.03 **Debtor.** The person signing this deed of trust is called the "debtor" or the grantor. If more than one person signs, all are collectively called the "debtor". If a person signs this deed of trust without obligation to pay the note, but only to transfer title as provided in paragraph 7.04, that person is not considered a debtor except to the extent of his interest in the property.
- 1.04 **Default.** The failure of debtor to keep any of debtor's promises in this deed of trust or note is called "default". Default includes failure to make payments under the note or notes evidencing future advances.
- 1.05 **Endorsements.** Attachments to a policy of title insurance given to insure secured party's interest in the real property are called "endorsements" to the title insurance policy.
- 1.06 **Fixtures.** Personal property attached to the real property that is subject of this deed of trust is a fixture.
- 1.07 **Foreclosure and Sale.** If secured party requires immediate payment in full, secured party may proceed with action to sell and take away all of debtor's remaining rights in the property and to have the property sold. At the sale, secured party or another person may acquire the property. This is known as "foreclosure and sale".
- 1.08 **Funds.** The amounts debtor pays secured party for taxes and insurance are called "funds".
- 1.09 **Future Advances.** After the date of the initial loan and before full reconveyance secured party may make additional loans to the debtor. If a note signed by the debtor at that time says the amount borrowed is secured by this deed of trust, that loan is a "future advance".
- 1.10 **Grantor.** A person who signs this deed of trust transferring a beneficial interest in property to the trustee is a "grantor".
- 1.11 **Immediate Payment in Full.** Secured party may require debtor pay immediately the entire amount then remaining unpaid under the note and under this deed of trust. Secured party may do this without making any further demand for payment. This requirement will be called "immediate payment in full".
- 1.12 **Lien.** Any claim, demand or charge that is made against the property because of an unfulfilled duty or debt is called a "lien".
- 1.13 **Maturity Date.** The last date secured party's final payment may become due is the "maturity date".
- 1.14 **Note.** A promissory note signed by the debtor secured by this deed of trust is called the "note". The note is a promise to repay secured party the amount borrowed or due from secured party, plus interest.
- 1.15 **Person.** Any individual, group of individuals, joint venture, partnership, association, organization, corporation or governmental entity is called a "person" in this document.
- 1.16 **Personal Property.** Assets other than real property debtor gives to secured party as additional security are called "Personal Property". Personal property includes other personal assets acquired by debtor as replacement or substitute to personal property given as security. Personal property also includes all additions and accessions to the personal property and all the proceeds of sale, lease or the transfer of personal property.
- 1.17 **Property.** Personal property in which a security interest is given to secured party and real property debtor transfers to trustee for security for the debt is called "property".
- 1.18 **Real Property.** The real property to be transferred by the debtor to the trustee, located in a county where this deed of trust is recorded is called the "real property". The real property is not more than twenty (20) acres in area or is located within an incorporated city or village. The real property includes all improvements, tenements, hereditaments, appurtenances, reversions,

remainders, rents, issues, profits, easements, oil, gas and mineral rights, and all water, water rights and water stock.

- 1.19 **Reconveyance.** A return of the trustee's property interest to the debtor is a "reconveyance". A return of less than all of the trustee's interest is a "partial reconveyance". A return of all of the trustee's interest is a "full reconveyance".
- 1.20 **Secured Party.** The person extending credit, secured by this deed of trust, to debtor is called "secured party" and is the beneficiary of this deed of trust.
- 1.21 **Security Interest.** Secured party's interest in personal property, whether fixtures or not, given to secured party by debtor as additional security for the debt is called a "security interest".
- 1.22 **Short Form.** The document to be recorded identifying the note this deed of trust secures is called the "short form".
- 1.23 **Successor Trustee.** A corporation or person appointed to replace the trustee, as provided by law, is known as a "successor trustee". A properly appointed successor trustee acquires all the rights of the trustee as soon as appointed by secured party.
- 1.24 **Taxes and Insurance.** Taxes, assessments, hazard insurance premiums and mortgage insurance premiums are called "taxes and insurance".
- 1.25 **This Deed of Trust.** The phrase "this deed of trust" describes the short form with the terms of this document incorporated by it.
- 1.26 **Transfer.** Any lease with a term longer than three (3) years not containing an option to purchase, option to buy, sale, contract of sale, mortgage, deed of trust or other conveyance by debtor is called a "transfer".
- 1.27 **Trustee.** The corporation or person holding an interest in the real property for the benefit of the secured party is called the "trustee".
- 1.28 **Variable Interest Rate Note.** A note providing for adjustment of the interest rate at intervals is a "variable interest rate note". The effect of a variable interest rate note may be to increase or decrease the number of periodic payments debtor must make to secured party, to extend or shorten the term of payments, or both. A variable interest rate note may be entered at the date of the initial debt secured by the deed of trust or negotiated later. If debtor and secured party enter a variable interest rate note, the interest rate, payment terms, or balance due on the debt may be indexed, adjusted, renewed or renegotiated. A variable interest rate note is also called a "note".

## 2. TRANSFER FOR SECURITY.

- 2.01 Debtor's transfer of rights in the property to the trustee protects the secured party from any losses that might result if debtor:
  - a. Fails to pay amounts debtor owes secured party as stated in this deed of trust or the note;
  - b. Fails to pay, with interest, any amounts secured party spends under this deed of trust to protect the value of the property and secured party's rights in the property;
  - c. Fails to pay, with interest, any other amounts secured party loans as future advances;
  - d. Fails to keep any other promise or agreement in the note or this deed of trust.

## 3. DEBTOR'S WARRANTIES.

- 3.01 Unless the title policy given to insure secured party's rights specifically shows an exception agreed to by secured party, debtor gives a general warranty of title.  
Debtor represents:
  - a. Debtor is the lawful owner of the property;
  - b. Debtor has the right to grant and convey the property to trustee for secured party's protection;
  - c. Debtor has the right to transfer a security interest in personal property to secured party;
  - d. There are no outstanding liens against the property;
  - e. Debtor has not filed a declaration of homestead or, if debtor has filed a declaration of homestead, debtor agrees the declaration of homestead is junior and subordinate to secured party's liens created by this deed of trust.
- 3.02 Debtor agrees to be fully responsible for losses secured party suffers because any other person has rights in the property. Debtor promises to defend his ownership of the property against claims in the property by any other person.

## EMENTS.

### 4.01 Payment of note.

Debtor will pay secured party, when due, principal and interest under the note. Debtor will fulfill all other payment duties described in this deed of trust or the note. Debtor will pay principal and interest on future advances. Future advances are secured by this deed of trust.

### 4.02 Payment of taxes, liens and insurance.

a. Debtor will pay all taxes, assessments and liens that might be superior to this deed of trust. This deed of trust does not require debtor to satisfy a superior lien, if:

- (1) Secured party approves, in writing, the way in which debtor agrees to pay the liens; or
- (2) Debtor, in good faith, defends against the superior lien in a lawsuit and, during the lawsuit, the superior lien may not be enforced and no part of the property must be given up. If debtor isn't successful in the lawsuit, debtor will immediately pay the obligation.

b. Payment of hazard insurance.

Debtor will obtain hazard insurance as provided in this deed of trust and pay the premiums.

4.03 Secured party's application of debtor's payments. Secured party will apply debtor's payments, unless the law requires otherwise, in this order: to interest on payments secured party had to make under this deed of trust to protect its interest in the property; to payments which secured party had to make under this deed of trust to protect its interest in the property; to the amounts needed for taxes and insurance; to interest due under future advances; to principal on future advances; to interest due under the note; to principal then due under the note; to principal not then due under future advances; to principal not then due under the note.

### 4.04 Hazard insurance.

a. Hazard insurance must cover loss or damage to property caused by fire, hazards normally covered by all risk insurance, and other risks secured party requires. The insurance must be in the amounts and for the periods of time required by secured party. It is possible an insurance policy will have provisions that may limit the insurance company's duty to pay claims if the amount of coverage is too low. Those provisions are known as "co-insurance requirements". Secured party may not require debtor to obtain an amount of coverage that is more than the larger of the amount debtor owes secured party under the note and this deed of trust or the amount necessary to satisfy co-insurance requirements.

b. Debtor may choose the insurance company, but the choice is subject to secured party's approval. Secured party may not refuse to approve the choice unless the refusal is reasonable. All insurance policies and renewals must include what is known as a "standard mortgagee clause" to protect secured party. The form of all policies and renewals must be acceptable to secured party. Secured party has the right to hold the policies and renewals.

c. Debtor will promptly give secured party all receipts of paid premiums and all renewal notices debtor receives. If there is a loss or damage to the property, debtor will promptly notify the insurance company and secured party. If debtor does not promptly prove to the insurance company that loss or damage covered by the policy has occurred, secured party may do so at debtor's expense.

d. The amount paid by the insurance company is called "proceeds". The proceeds will be used to repair or to restore the damaged property unless:

- (1) It is not economically possible to make the repairs or restorations; or
- (2) The use of the proceeds for that purpose would lessen the protection given to secured party by this deed of trust; or
- (3) Secured party and debtor have agreed, in writing, not to use the proceeds for that purpose.

e. If repair or restoration of the property is not economically possible or if it would lessen secured party's protection under this deed of trust, the proceeds will be used to reduce the amount debtor owes secured party under the note and this deed of trust. If any proceeds remain after the amount debtor owes to secured party has been paid in full, the remaining proceeds will be paid to debtor.

f. If debtor abandons the property, or does not answer, within 30 days, a notice from secured party stating that the insurance company has offered to settle a claim for insurance benefits, secured party has the authority to collect the proceeds. Secured party may use the proceeds to repair or restore the property or to reduce the amount debtor owes secured party.

g. If any proceeds are used to reduce the amount debtor owes secured party under the note, that use will not delay the due

date or change the amount of any payments required by the note and this deed of trust. Secured party and debtor may agree to delays or changes in writing.

h. If secured party completes foreclosure and sale of the property, all of debtor's rights in the insurance policies will belong to secured party. All debtor's rights in proceeds paid because of damage that occurred before the property is acquired by secured party or sold will belong to secured party. Secured party's rights in proceeds will not be greater than the amount debtor owes to secured party immediately before the property is acquired by secured party or sold.

i. If the property includes a unit in a condominium project, the owners' association may insure the entire condominium project. That policy is called a "master policy". If the master policy remains in effect and meets the insurance requirements of this deed of trust:

- (1) Debtor's duty to obtain and to keep hazard insurance on the property is satisfied.
- (2) Debtor will not be required to include an amount for hazard insurance premiums in the monthly payment of funds.
- (3) If there is a conflict concerning the use of proceeds between the terms of this paragraph and the law or the terms of the declaration, bylaws, regulations or other documents creating or governing the condominium project, that law or the terms of those documents will govern the use of proceeds.
- (4) Debtor will promptly give secured party notice if the master policy is interrupted or terminated.

j. If the property includes a unit in a condominium project, it is possible proceeds will be paid to debtor instead of being used to repair or to restore the property. Debtor gives secured party debtor's rights to those proceeds. If the property includes a unit in a PUD, it is possible proceeds will be paid to debtor instead of being used to repair or restore the common areas or facilities of the PUD. Debtor gives secured party debtor's rights to those proceeds. The proceeds described in this subparagraph will be paid to secured party and will be used to reduce the amount debtor owes secured party. If any proceeds remain after secured party has been paid in full, the remaining proceeds will be paid to debtor.

### 4.05 Debtor's duty to maintain the property.

a. Debtor will keep the property in good repair. Debtor will not, and will not allow others to, destroy, damage or substantially change the property. Debtor will not allow the property to deteriorate or erode.

b. If the property includes an interest in a condominium or PUD, debtor will fulfill all debtor's duties under the declaration, bylaws, regulations and other documents that create or govern the condominium project or PUD. Debtor will not divide the property into smaller parts that may be owned separately (known as "partition or subdivision"). Debtor will not consent to the following actions unless debtor has given secured party prior notice and obtained secured party's consent in writing:

- (1) The abandonment or termination of the condominium project or PUD, unless, in the case of a condominium, the abandonment or termination is required by law.
- (2) Any significant change to the declaration, bylaws or regulations of the owners' association, trust agreement, articles of incorporation, or other documents that create or govern the condominium project or PUD, including, for example, a change in the percentage of ownership rights, held by unit owners, in the condominium project or in the common areas or facilities of the PUD.
- (3) A decision by the owners' association to terminate professional management and begin self-management of the condominium project or PUD.
- (4) The transfer, release, creation of liens, partition or subdivision of all or part of the common areas and facilities of the PUD. This provision does not apply to the transfer by the owners' association of rights to use those common areas and facilities for utilities and other similar or related purposes.

### 4.06 Debtors duty to protect secured party's rights in the property.

a. Debtor will take all necessary action to protect secured party's rights in the property.

b. Debtor will execute all documents needed to perfect secured party's lien or security interest. Debtor will execute all documents needed to continue secured party's perfected lien or security interest.

### 4.07 Secured party's right to inspect the property.

Secured party, and others authorized by secured party, may enter on and inspect the property. They must do so in a reasonable manner and at reasonable times. Before an inspection is made, secured party must give debtor notice stating a purpose for the inspection. The purpose must be related to secured party's rights

the property. For purposes of this paragraph, notice need not be written. Notice must be not less than four (4) hours.

**4.08 Secured party's right to take action to protect the property.**

- a. If debtor does not keep debtor's promises made in this deed of trust and note or someone, including debtor, begins a legal proceeding that may significantly affect secured party's rights in the property (for example, a legal proceeding in bankruptcy, in probate, for condemnation, or to enforce laws or regulations), secured party may do and pay for whatever is necessary to protect the value of the property and secured party's rights in the property. Secured party's actions under this paragraph may include, for example, paying taxes and insurance when due, appearing in court, paying reasonable attorney's fees, and entering the property to make repairs. Secured party must give debtor notice before secured party may take any of these actions. For purposes of this paragraph, notice shall be not less than three (3) days. Notice does not need to be in writing.
- b. Debtor will pay interest on amounts secured party spends at the same rate stated in the note. If payment of interest at that rate would violate the law, debtor will pay interest on the amount spent by secured party under this paragraph at the highest rate that the law allows. Interest on each amount will begin on the date the amount is spent by secured party.
- c. Debtor will pay secured party, within ten (10) days after notice to debtor, with interest, amounts secured party spends under this paragraph. Secured party's payments and interest are secured by this deed trust. Debtor's failure to repay those amounts and interest as provided, will be a default under the note and this deed of trust.
- d. Secured party and debtor may agree in writing to terms of payment that are different from those in this paragraph.
- e. Although secured party may take action under this paragraph, secured party does not have to do so.

**4.09 Condemnation.**

- a. Debtor gives secured party debtor's rights:
  - (1) To proceeds of all awards or claims for damages resulting from condemnation or other governmental taking of the property; and
  - (2) To proceeds from a sale of the property made to avoid condemnation.
- b. All proceeds from condemnation will be paid to secured party.
- c. If all of the property is taken, the proceeds will be used to reduce the amount debtor owes secured party. If proceeds remain after the amount debtor owes to secured party has been paid in full, the balance will be paid to debtor. Unless secured party and debtor agree otherwise, in writing, if only a part of the property is taken, the amount debtor owes secured party will be reduced by the amount of proceeds multiplied by the total amount that debtor owes secured party immediately before the taking divided by the fair market value of the property immediately before the taking.
- d. If debtor abandons the property, or does not answer, within 30 days, a notice from secured party stating a governmental authority has offered to make a payment or to settle a claim for damages, secured party has the right to collect the proceeds. Secured party may use the proceeds to repair or restore the property or to reduce the amount debtor owes secured party.
- e. If proceeds are used to reduce the amount of principal debtor owes secured party, that use will not delay the due date or change the amount of any of debtor's payments. Secured party and debtor may agree to delays or changes in writing.
- f. If the property includes a unit in a condominium or PUD, the promises and agreements in this paragraph will apply to a condemnation, or sale to avoid condemnation, of the debtor's interest in condominium association property and PUD common areas and facilities and the property.

**4.10 Secured party's rights to rental payments.**

- a. As additional protection for secured party, debtor gives secured party debtor's rights to rental payments from the property. This right applies to any monetary benefits from the property (issues and profits). Until secured party requires immediate payment in full, or until debtor abandons the property, debtor has the right to collect and keep rental payments when due. Debtor has not given any of debtor's rights to rental payments from the property to anyone else, and will not do so without secured party's consent in writing.
- b. If secured party requires immediate payment in full or if debtor abandons the property, secured party, persons authorized by secured party or a receiver appointed by a court at secured party's request may:
  - (1) Collect the rental payments, including overdue rental pay-

ments, direct from the tenants;

- (2) Enter on and take possession of the property;
- (3) Manage the property; and
- (4) Sign, cancel and change leases.

- c. If secured party notifies the tenants that secured party has the right to collect rental payments directly from them under this paragraph, the tenants may make those rental payments to secured party without having to ask whether debtor has failed to keep debtor's promises.
- d. If there is a sale, debtor will pay secured party reasonable rent from the date of sale for as long as debtor occupies the property. This does not give debtor the right to occupy the property.
- e. All rental payments collected by secured party or by a receiver, other than the rent paid by debtor under this paragraph will be used to pay the costs of collecting rental payments and of managing the property. If any part of the rental payments remains after those costs have been paid in full, the remaining part will be used to reduce the amount debtor owes secured party. The costs of managing the property may include the receiver's fees, reasonable attorney's fees, the cost of bonds, and any losses secured party reasonably incurs. Secured party and receiver will be obligated to account only for rental payments actually received.

**5. TRANSFERS OF THE PROPERTY RIGHTS AND OBLIGATIONS.**

**5.01 Transfer and assumption.**

- a. If debtor transfers all or part of the property or any rights in the property, any person to whom debtor transfers the property may take over all of debtor's rights and duties under this deed of trust only if certain conditions are met. Those conditions are:

- (1) Debtor gives secured party notice of the transfer;
- (2) Secured party accepts the person's credit;
- (3) The person agrees to pay interest on the amount owed to secured party under the note and under this deed of trust at whatever rate secured party requires; and
- (4) The person signs an agreement, acceptable to secured party, that obligates the person to keep all of the agreements made in the note and in this deed of trust.

If debtor transfers the property and each of the conditions in (1), (2), (3) and (4) of paragraph 5.01-a are satisfied, secured party will release debtor from all of debtor's obligations under the note and under this deed of trust.

- b. If debtor sells or transfers the property and the conditions in (1), (2), (3) and (4) of paragraph 5.01-a are not satisfied, debtor will still be fully obligated under the note and under this deed of trust and secured party may require immediate payment in full. Secured party will not have the right to require immediate payment in full as a result of certain transfers. Those transfers are:

- (1) The creation of liens against the property given by debtor as security for a loan that are inferior to this deed of trust not relating to a transfer to rights in occupancy of the property;
- (2) A transfer of the property to surviving co-owners, following the death of a co-owner, when the transfer is automatic according to law;
- (3) Leasing the property for a term of three (3) years or less, as long as the lease does not include an option to buy;
- (4) A transfer where the spouse or children of the debtor become an owner of the property;
- (5) A transfer resulting from a decree of divorce, a separation agreement or property settlement agreement where the debtor's spouse becomes an owner;
- (6) The creation of a purchase money security interest for household appliances;
- (7) A transfer to an inter vivos trust in which debtor is and remains a beneficiary and which does not relate to a transfer of rights of occupancy.

If secured party requires immediate payment in full under this paragraph, secured party will send debtor a notice stating this requirement. The notice will give debtor at least 30 days to make the required payment. If debtor does not make the required payment during the 30 days, secured party may bring action for foreclosure and sale without giving debtor any further notice of demand for payment.

- 5.02 Obligations of persons taking over debtor's rights or duties. Any person who takes over debtor's rights or duties under this deed of trust will have all of debtor's rights and will be obligated to keep all of debtor's promises and agreements.

## 6. FORECLOSURE AND SALE.

### 6.01 Secured party's rights of foreclosure and sale.

a. Except as provided in paragraph 5.01 b, secured party may require immediate payment in full under this paragraph only if all of the following conditions are met:

- (1) Debtor fails to keep any promise or agreement made in the note or this deed of trust.
- (2) Secured party sends to debtor a notice stating:
  - (a) The promise or agreement that debtor failed to keep;
  - (b) The action that debtor must take to correct that failure;
  - (c) A date, at least 30 days later, when debtor must have corrected the default;
  - (e) If debtor does not correct the default by the date stated in the notice, secured party may require immediate payment in full, and secured party or another person may acquire the property by foreclosure and sale;
  - (f) Debtor may speak with a named representative of secured party to discuss any questions debtor has about the notice;
  - (g) If debtor meets the conditions stated in the notice and brings all obligations current within 115 days of the recording of a "notice of default and election to sell under deed of trust", debtor will have the right to have any action for foreclosure and sale discontinued and to have the note and this deed of trust remain in full effect as if immediate payment in full had never been required; and
  - (h) Debtor has the right in any action for foreclosure and sale to argue debtor did keep promises and agreements under the note and this deed of trust, and to present any other defenses debtor may have.
- (3) Debtor does not correct the failure stated in the notice from secured party by the date stated in that notice.

### 6.02 Debtor's right to have foreclosure and sale discontinued.

a. Even if secured party has required immediate payment in full, debtor may have the right to have any action brought by secured party for foreclosure and sale or for other enforcement of this deed of trust discontinued. Debtor will have this right at any time before 115 days after recording of a "notice of default and election to sell under deed of trust", if debtor meets the following conditions:

- (1) Debtor pays secured party the full amount that would have been due under this deed of trust, the note, and any notes for future advances as if secured party had not required immediate payment in full;
- (2) Debtor corrects failure to keep any of the other promises or agreements made in this deed of trust;
- (3) Debtor pays all of secured party's reasonable expenses in enforcing this deed of trust;
- (4) Debtor does whatever secured party reasonably requires to assure secured party's rights in the property, secured party's rights under this deed of trust, and debtor's duties under the note and this deed of trust continue unchanged.

b. If debtor fulfills all of the conditions in this paragraph, the note and this deed of trust will remain in effect as if immediate payment in full had not been required.

### 6.03 Secured party's rights of foreclosure of security interests.

If debtor gives secured party a security interest in personal property, including fixtures, secured party has all the remedies available to secured party under the Idaho Uniform Commercial Code. (U.C.C.)

### 6.04 Order of Foreclosure.

Secured party may at secured party's option, foreclose the security interest in personal property before or after foreclosure and sale of the real property. If secured party elects, secured party may foreclose secured party's security interest and the secured party's beneficial interest in the real property in the same action.

### 6.05 Abandonment of Security.

Secured party may, but is not required to abandon secured party's security interest or beneficial interest in real property and initiate legal action to recover amounts due from debtor. This election may be made even after secured party has foreclosed secured party's interest in part of the security.

## 7. MISCELLANEOUS.

### 7.01 Continuation of debtor's duties.

a. Secured party may allow debtor or a person who takes over debtor's rights and duties to delay or change the amount of the monthly payments of principal and interest due under the note.

or under this deed of trust. Even if secured party does this, that person and debtor will both still be fully obligated under the note and this deed of trust unless secured party releases debtor as provided in this deed of trust.

b. Secured party may allow delays or changes for debtor or a person who takes over debtor's rights and duties, even if secured party is requested not to. Secured party will not be required to bring an action for foreclosure and sale against a person for not fulfilling duties under the note or under this deed of trust, even if secured party is requested to.

### 7.02 Continuation of secured party's rights.

Even if secured party does not exercise or enforce any of secured party's rights under this deed of trust or the law, secured party will still have all of those rights and may exercise and enforce them in the future.

### 7.03 Secured party's ability to enforce more than one of secured party's rights.

Each of secured party's rights under this deed of trust is separate. Secured party may exercise and enforce one or more of those rights, as well as any of secured party's other rights under the law, one at a time or all at once.

### 7.04 Obligation of multiple debtors.

If more than one person signs this deed of trust as debtor, each of them is fully obligated to keep all debtor's promises and duties contained in this deed of trust. Secured party may enforce secured party's rights under this deed of trust against each one individually or against all together. This means any person who signs may be required to pay all the amounts owed secured party and keep all other promises in the note and this deed of trust. If a debtor does not sign the note, that person is signing the deed of trust only to give that person's rights in the property to secured party. That person is not personally obligated to make payments.

### 7.05 Agreements about giving notice.

Unless the law requires otherwise, any notice given under this deed of trust will be given by delivering it or by mailing it to the address stated in this deed of trust. A notice will be delivered or mailed at a different address if a notice of a different address is given the other party. A notice required by this deed of trust is given when it is mailed or when it is delivered, whichever is earlier. Unless this deed of trust states otherwise, notice must be given, in writing, at least thirty (30) days before the intended action.

### 7.06 Debtor's other obligations to secured party.

In the event debtor, now or after the date of the loan secured by this deed of trust, owes secured party any amounts on any other note and fails to keep the promises debtor has made, debtor's failure to keep those promises may be considered to be a failure to keep promises under this agreement.

### 7.07 Law that governs this deed of trust.

The laws of Idaho will govern this deed of trust. If any term of this deed of trust or note conflicts with Idaho law or is unenforceable, all other terms of this deed of trust and note will remain in effect if they can be given effect without the conflicting term.

### 7.08 Secured party's duty to discharge this deed of trust when the note is paid in full.

When secured party has been paid all amounts due under the note and this deed of trust, secured party will discharge this deed of trust by delivering the note and a request for full reconveyance to the trustee. Debtor will not be required to pay secured party for the discharge, but debtor will pay all costs of recording the reconveyance in the proper official records.

### 7.09 Debtor provided copies.

Debtor will be given copies of the note, this deed of trust and short form. Those copies must show the original note and a short form have been signed. The short form will state this document is the one governing the agreement between debtor, secured party and trustee. Debtor will be given those copies when debtor signs the note and short form.

### 7.11 Obligation of successors in interest.

Any person who obtains the interest of debtor, secured party or trustee by transfer, succession or inheritance is subject to all of the terms of this deed of trust and entitled to all the rights provided in this deed of trust.

### 7.12 Captions.

The captions and titles of this deed of trust are for convenience only. They may not be used to interpret or to define the terms of this deed of trust.